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AMERICAN CITIZENS--PRISONERS IN VAN DIEMAN'S LAND.

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

TRANSMITTING

The information required by the resolution of the House of Representatives of the 21st ultimo, in relation to the American citizens now British prisoners of State in Van Dieman's Land.

JULY 20, 1841.

Referred to the Committee on Foreign Affairs.

To the House of Representatives of the United States :

I herewith transmit to the House of Representatives, in reply to their resolution of the 21st ultimo, a report from the Secretary of State, with accompanying papers.

JOHN TYLER.

WASHINGTON, July 16, 1841.

DEPARTMENT OF STATE,

Washington, July 16, 1841.

The Secretary of State, to whom has been referred the resolution of the House of Representatives of the United States, dated the 21st ultimo, requesting the President "to communicate to that House, so far as the public interest will permit, the correspondence, if any, between the Government of the United States and that of Great Britain, or the public authorities of either, relating to the American citizens now British prisoners of State in Van Dieman's Land," has the honor to report that there is no correspondence in this office showing that any American citizens are prisoners of State in Van Dieman's Land. On the general subject of the detention or imprisonment of citizens of the United States, on account of occurrences in Canada, a correspondence took place some time ago between this Department and the British minister, connected with the proceedings of a special agent whom the President saw fit to appoint to make inquiry respecting this subject.

Copies of this correspondence, and also of the instructions to that agent, and of the letters from him to this Department, are herewith transmitted.

Respectfully submitted.

DANIEL WEBSTER.

To the PRESIDENT of the United States.

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Mr. Forsyth to Mr. Fox.

DEPARTMENT OF STATE,

Washington, April 3, 1838.

The President having determined to send a special agent into the British provinces adjoining the United States on the north, to inquire into and report upon the facts alleged by certain persons claiming to be citizens of this Republic, who are now held in confinement in Canada, has for this purpose availed himself of the services of Mr. Aaron Vail, late chargé d'affaires of this Government at London. To enable Mr. Vail to fulfil satisfactorily the duties of this delicate and important mission, it will be necessary for him to have the countenance of the British local authorities; and, to this end, I have the honor to request that you will be pleased to furnish him with such letter or letters of introduction to them as shall secure to him all proper facilities in the prosecution of the object proposed. Mr. Vail will leave Washington early to-morrow morning. It is therefore desirable, if you accede to this request, that the letters may be placed in his possession this afternoon. Mr. Vail will cheerfully take charge of any despatches to the provincial authorities that you may think proper to entrust to him.

I have the honor to be, with high consideration, your obedient servant,
JOHN FORSYTH.

HENRY S. FOX, Esq., &c.

Mr. Fox to Mr. Forsyth.

WASHINGTON, *April 3, 1838.*

SIR: In compliance with the request contained in your letter of this day's date, I have the honor herewith to enclose, open for your perusal, letters of introduction for Mr. Vail, to the Governors of Her Majesty's Provinces of Lower and Upper Canada.

I have the honor to be, with the highest consideration, your most obedient and humble servant,

H. S. FOX.

Hon. JOHN FORSYTH, &c.

Mr. Forsyth to Mr. Vail.—Extract.

DEPARTMENT OF STATE,

Washington, April 3, 1838.

SIR: Complaints having reached the President from certain individuals claiming to be citizens of the United States, that they have unjustly, and without sufficient proof, been arrested and thrown into the jails of Toronto and Kingston, in Upper Canada, on suspicion of having been concerned in the recent disturbances in that province, and that they are still confined in prison, under circumstances of great cruelty and hardship, and without the prospect of an immediate trial by jury, the President has deemed it proper to avail himself of your services in the character of special agent, to ascer-

tain the truth of the representations made by the complainants. For this purpose, you will, therefore, repair to Toronto, in Upper Canada, without unnecessary delay, make a minute and careful inquiry into the allegations contained in the letters referred to, copies of which are herewith delivered to you, and obtain all the facts necessary to a full understanding of these cases to be reported to this Department upon your return. The enclosed introductory letter to the local authorities, which has been kindly furnished by the British minister here, will secure to you all proper attentions and facilities in the prosecution of the duties of your mission. If, upon a careful investigation of all the circumstances connected with the arrest and detention of these individuals, it appears that they, or any of them, are really entitled to the interposition of their Government, or are confined merely upon suspicion, you will make an informal representation in their behalf in the proper quarter, and endeavor to obtain their release, or at least an immediate melioration of their condition, and a prompt trial by a judicial tribunal. To aid in effecting this object, you are authorized, if necessary, to employ legal counsel in their behalf.

The statements made in the letters addressed to the Department you will of course not disclose, as, if true or false, they might operate injuriously to the persons so confined.

While in Canada, you will make enquiry, generally, into the condition of all prisoners who claim to be citizens of the United States, and give your good offices to any of them whose cases justify your interposition, or whenever you think that they can be given without improperly committing this Government.

A general statement of the condition and treatment of all citizens of the United States who may be accused and imprisoned in Upper Canada, will be acceptable to the Department on your return, and you are requested to make such minutes of all the information you collect as will enable you to furnish it.

JOHN FORSYTH.

AARON VAIL, Esq., &c.

Mr. Vail to Mr. Forsyth.—Extracts.

KINGSTON, UPPER CANADA,

April 21, 1838.

SIR: I arrived here on the 18th instant from Montreal, and, aided by the civil and military authorities of the place, from whom, on the recommendation of Sir John Colborne, I have received every facility they could afford me, immediately applied myself to the accomplishment of the object of my visit. I have found in the prisons ten individuals claiming the privileges of American citizens, confined on charges and evidence of a nature which leaves me but little doubt of succeeding in effecting the release of the greater number of them.

* * * * *

I shall leave this to-morrow morning for Toronto, where I hope soon to complete the execution of your instructions.

I am, sir, very respectfully, your obedient servant.

A. VAIL.

HON. JOHN FORSYTH.

Secretary of State, Washington.

WASHINGTON, *May 5, 1838.*

SIR : In fulfilment of your instructions of the 3d of last month, and agreeably to suggestions verbally made to me by the President, I proceeded with all expedition on my journey, and reached Montreal on the morning of the 9th. The letter of which I was the bearer, from the British minister at Washington, to Lieutenant General Sir John Colborne, commander of the forces in the provinces, and administering the government of Lower Canada, secured to me on the part of that officer, and from those acting under him, all the attentions and facilities I could have desired towards the attainment of the object of my visit to that place. The only person, however, claiming to be a citizen of the United States, whom I found in the prisons of Montreal, though arrested with a party of insurgents, was in custody on civil process to answer in damages for injury alleged to have been done by him to the property of a private individual. Having on inquiry ascertained that no other Americans were in confinement in the lower province on charges connected with the late insurrectionary movement, I proceeded to Kingston, where introductory letters from Sir John Colborne to the civil and military authorities of the place procured me the same attentions and facilities which I had received at Montreal.

Besides the three individuals whose case was made the subject of representation to the President, I found in the Kingston jail, and in the fort adjoining the town, five other Americans, who, although for some time domiciled in Canada, had not changed their allegiance, and still called themselves citizens of the United States. One of these had, like those first mentioned, been arrested at or near Hickory island, on a charge of intending to join in the contemplated attack from that quarter; the other four had been taken up at various points in the interior on suspicion of co-operation in a simultaneous demonstration upon the city from the opposite side. I was kindly afforded the opportunity of a private conversation with each of these persons separately, and heard from them the particulars of their respective cases, and of the treatment they had experienced during their confinement.

With reference to the nature of the charges against these people, I was referred to the authorities at Toronto, to whom the papers had been forwarded for proofs of the guilt of the three individuals whose case had been laid before the President; and as to the other five prisoners, although assisted by the Queen's counsel, who unreservedly communicated to me all the evidence then in his hands, I was unable to discover any documentary proofs whereon I thought that legal prosecutions could be instituted, unless it be in two cases where the examination on oath of the prisoners themselves had been taken down and signed by them.

Having collected all the information likely to be obtained at Kingston, I proceeded to Toronto, where I delivered my introductory letter to Major General Sir George Arthur, recently appointed Lieutenant Governor of Upper Canada. From his excellency also, I received the offer of all the assistance it might be in his power to afford me; and accompanied by the President of the Executive Council of the Province, to whose kindness likewise I am indebted for much of the information I wanted, I repaired to the jail, where I was allowed free access to all and each of the American prisoners individually. Of the three who from that place had addressed petitions to the President, one had some time before been released; another was still detained, but upon charges attended with mitigating circumstances likely to lead to a similar result. Against the third, however, there

were accusations of a sufficiently aggravated character to have induced him to plead guilty to the charge of treason, and to throw himself upon the executive clemency, under a late act of the Provincial Parliament, delegating to the Governor the royal prerogative of granting in such cases reprieves, commutations, and pardons, on behalf of the crown.

In addition to these two persons, I found in the same prison, the only one in the city of Toronto, thirty-three other individuals claiming the privileges of American citizenship. Of these, seventeen had been captured in the schooner *Ann* at the time of her attack upon the town of Amherstburg. Two had belonged to the party by whom an invasion of that part of the province had been threatened; and the remaining fourteen, most of whom had, for longer or shorter periods resided in Canada, had been arrested on suspicion of joining in the contemplated attack on the city of Toronto. This latter class of prisoners having accepted the benefits of the act above referred to, and by pleading guilty to the charge of treason, acknowledged their allegiance to the British Crown, and, consequently, their renunciation of American citizenship, I considered them as having no claim to the notice of the Government of the United States, as I did those who, having taken up arms in violation of our laws as well as of those of Great Britain, had equally forfeited whatever claim they might otherwise have had to the protection of their country.

Out of the thirty-five persons, therefore, confined in the gaol at Toronto, there remained but one of whose case I felt at liberty, under my instructions, to take particular notice; and his name is included in the paper, of which a copy is annexed, containing a brief summary of each of the eight cases appearing to me entitled to the favorable consideration of the Colonial Government, and which, with the assent of Sir George Arthur, I, with a view to such action upon it as he might deem appropriate, informally placed in his excellency's hands.

From all the data I have been able to collect, and the indications which have come under my observation; from my frequent opportunities of intercourse and conversation with the members, civil and military, of the governments of the two provinces, afforded me by the civilities and attentions every where extended to me; from the spirit of forbearance and the lenient disposition I witnessed towards all who had acted but subordinate parts in the Canadian insurrection, I am led to a confident belief that such of our countrymen domiciled in Canada as have been arrested on mere suspicion, or upon charges unsusceptible of direct proof, will be released without being formally brought to trial; and that those whose imprudent conduct betrayed them, in violation of the laws of the United States, into acts of open hostility against the people of Canada, will, under the extraordinary powers vested in the Chief Magistrate of the province by the humane provisions of the act to which I have before alluded, be dealt with in the mildest manner consistent with the demands of justice and the nature of their offence, without any feeling of vindictiveness or resentment, and in a spirit of lenity and forgiveness, which, if I am not mistaken, has taken the place of that policy by which the fearful examples of severity recently exhibited at Toronto were dictated.

With regard to the treatment of American prisoners, generally, into which, under your instructions, it was my duty more especially to inquire, I am bound to say that I found it free from any intended harshness or neglect. At Kingston, where the common gaol was inadequate to the accom-

modation of so large an accession to the ordinary number of its inmates, the American citizens, with only two exceptions, had been placed in one of the casements of the fort, fitted up for their reception. The room is twenty feet by forty, with two windows and a door opening upon the parade, which appeared to me sufficient for all purposes of light and ventilation. It was kept warm and dry by a stove; and the prisoners had their beds spread upon platforms erected for the purpose. For one hour each day they were allowed to walk on the parade; and, at all times, to see and correspond with their friends. Their food was the ordinary prison allowance, consisting of one pound of bread and one pound of meat, to which they might make any addition their private means would permit. Their answers to my inquiries bore unanimous testimony to the kindness with which they were treated by the officers of the garrison, some of whom had carried it so far as to afford pecuniary aid and raiment to such as were entirely destitute of private resources. The two men left in the city gaol occupied the debtor's apartment, and gave equally favorable accounts of the treatment they received, excepting that the place afforded no conveniences for exercise in open air.

At Toronto, where the gaol is small, and where no other accommodations could be procured, the prisoners were more crowded; but at the time of my visit, they all occupied rooms thoroughly aired and warmed. Some of them complained that, during the first period of their imprisonment, they had been confined in cells, and even put in irons. The explanation given by the keeper was that, when, at first, the number of prisoners was much greater and the gaol less secure, it was deemed necessary to place in closer confinement those of whom attempts to escape were apprehended. All the prisoners were provided with bedding, either their own, or furnished by the prison; but such of them as had not the means of purchasing provisions, complained that the prison allowance, consisting here of only one pound of bread and a quart of soup, was insufficient. With the exception of complaints made by those who were taken in arms, of harshness on the part of the military who apprehended them, I was unable to discover any grounds of dissatisfaction as to personal treatment, which all agreed in saying had been as humane and free from unnecessary severity as circumstances had permitted.

I have taken occasion in the course of this statement to acknowledge the kind attentions and facilities extended to me by the local authorities, wherever the purposes of my mission brought me within the range of their acquaintance. I recur to the subject in this place for the purpose of expressing my conviction that much of the friendly feeling by which these civilities were prompted, grew out of a proper appreciation on their part of the motives which had determined the President in sending an accredited agent near them, and of a belief that the interchange of views and sentiments, of which such an agent would be the organ between them and the American Government, could not but have a tendency to remove unfavorable impressions on both sides, and to strengthen the good understanding subsisting between the two Governments.

I am, sir, with great respect, your obedient servant,

A. VAIL.

HON. JOHN FORSYTH,

Secretary of State, Washington.

[Enclosure.]

American citizens in confinement in Upper Canada, who, so far as the undersigned has been made acquainted with their cases, appear to have some claim to the indulgent consideration of his excellency.

AT KINGSTON.

John G. Pennock, accused of surreptitiously obtaining the countersign. He states that it was given to him by an officer, who desired him to reconnoitre Hickory island. The evidence against him is vague, and the Queen's counsel has offered to release him on bail.

Amos E. Proctor, aged 17; accused of leaving his home on the night of the contemplated attack upon Kingston. The accusation is not sustained by proofs, and the Queen's counsel recommends his release.

Nelson Long, aged 22; same accusation; alike unsupported; and his discharge is recommended by the Queen's counsel.

James Getty, aged 17; same accusation; the Queen's counsel does not recommend any proceedings against him, but suggests his further detention as a witness.

John Holsenburg, Ebenezer Stores, John Packard—arrested on their way to Hickory island, where they state they were going, at the instance of a woman whose husband had joined the rebels, for the purpose of endeavoring to bring him back to his family. They were unarmed, and the island had been evacuated the day before.

IN TORONTO.

Aaron Friel—has occasionally been employed as a teacher; is not indicted, nor has petitioned. Mr. Sullivan believes that the charges against him are not of a grave character, and that he will be discharged.

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